

OGC HAS REVIEWED

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*Legal opinion
sent to [redacted]*

4 May 1948

Executive for A & M

Assistant General Counsel

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Accident case of [redacted]

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1. Attached herewith is the complete file in the accident case of [redacted] driver of a CIA car which struck a taxicab in Maryland.

2. This case has been before you before, but was returned by you to the investigating officer to determine the legal speed limit at the point of accident and to secure additional information as to possible negligence on the part of the CIA driver, [redacted]

3. I have talked with [redacted] who was a passenger in the CIA car at the time of the accident, and find that he now has changed several of the statements in his undated memorandum which was forwarded in the original file.

[redacted] reaffirms the fact that the driver was going no more than 30 miles per hour and at what, to him appeared to be a reasonable speed under the circumstances. [redacted] states, however, that his original statement that the taxi was about "200 feet" ahead was an error and should have read "20 feet".

[redacted] also disclaims any recollection as to whether or not the light "had just turned red" or was still green. He does state that the driver's application of his brakes was useless, as they did not hold on the slippery pavement.

4. As the accident in question occurred in Maryland, Maryland law and cases would be controlling. In reaching your conclusions on the facts in this case, the question that you must decide is whether the CIA driver exercised due care under the circumstances. The first of these circumstances to consider is the question as to whether the CIA driver's rate of speed was excessive, considering the weather and traffic conditions. The second of these circumstances involves the question as to whether, in view of the conditions of the road, he was justified in following so closely upon the taxicab, trailing the latter on his own admission at about 15 or 20 feet. If you find that [redacted] was not driving at an excessive rate of speed, and that he was not following too closely upon the taxicab under existing conditions, and that under these conditions his car was under proper control, the claim of the taxicab owner must be rejected on the grounds that

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there is not sufficient evidence available upon which CIA liability can be predicated. If, on the other hand, you find that there is negligence on the part of the CIA driver, then the taxicab claim must be considered.

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5. The speed limit at the point where the accident occurred is reported by the investigating officer to be 30 miles an hour. [REDACTED] the CIA driver, states that he was "travelling at 20, 22, and 25 miles per hour" stepping up his speed to between 25 and 30 miles an hour to pass two vehicles shortly before striking the taxicab. His passenger, [REDACTED], as set out in Par. 3 above, stated that he did not "think the driver was going over 30 MPH", which [REDACTED] has substantiated in a conversation with the undersigned. Therefore, from all available testimony, [REDACTED] did not exceed the legal speed limit.

However, this is not completely determinative, for the Maryland Motor Vehicle Law (Acts of 1943, Ch. 1007, Sec. 157) provides that -

"No person shall drive a vehicle on a highway at a greater speed than is reasonable and prudent under the conditions then existing."

It is therefore necessary for you to determine whether the CIA driver was driving not only within the speed limit, but also at a speed that was "reasonable and prudent" at the time of the accident, all weather and traffic conditions being considered.

6. The Motor Vehicle Law of Maryland states that (Acts of 1943, Ch. 1007, Sec. 169(a)) -

"The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

The basic duty in this connection has been stated as

"the duty of the rear driver to keep a safe distance between vehicles, and to keep his machine well in hand, so as to avoid doing injury to the machine ahead. . ." (Huddy: 3-4 Automobile Law 195 (9th ed.))

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This rule is further elaborated to hold that -

"The only rule that can govern the interval to be maintained is that of reasonable care under the circumstances. The mere fact that a vehicle is moving in close proximity and keeping up with it does not of itself constitute negligence." (2 Blackfield: Cyclopaedia of Automobile Law, Sec. 942).

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_____ statement is that he was travelling between 15 and 20 feet behind the taxicab at the time of the accident. His passenger testifies that the distance was also approximately 20 feet. It is therefore necessary for you to determine whether, under the given circumstances as to traffic and weather conditions at the time and place of the accident, the distance between the two cars should be considered "reasonable and prudent" within Sec. 169(a) of the Maryland Motor Vehicle Law.

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7. The statements of the CIA driver and his passenger, _____, tend to indicate that _____ put on his brakes but that this was useless for quick stopping due to the icy condition of the road. The brakes evidently did not hold immediately, with the result that the CIA car skidded into the taxicab.

In a leading Maryland case involving skidding on a wet street, (Fillings v. Diehlman, 168 Md. 306, 177 Atl. 327 (1935)) the Maryland Court of Appeals stated -

"It is conceded and indisputable, that the skidding of an automobile is not in itself sufficient to justify an inference of negligent operation. . . . But such an inference is permissible when the skidding results from the driver's negligent disregard of conditions by which such a risk is created or increased."

In another case in the Maryland Court of Appeals, (Baltimore Transit Company v. Alexander, 172 Md. 454, 192 Atl. 349 (1937)), it was pointed out that -

". . . while reasonable care on the part of an operator of a motor vehicle requires that he have the vehicle under such control . . . that the vehicle may be stopped if necessary to avoid a collision . . . the control must be a reasonable control, depending upon the circumstances and not an absolute control so that the motor vehicle may be stopped immediately under all circumstances.

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Traffic regulations permit a speed which makes it impracticable for even a motor vehicle of low tonnage to be stopped instantly. The law of physics will not permit it."

In the case of Vizzini v. Dockin, 176 Md. 639, 6 Atl. 2d 637 (1939) where the road was hampered by rain, sleet and freezing conditions, the Maryland Court of Appeals stated -

"When weather conditions or darkness are such as to interfere with or shorten the view of the road, it only serves to increase the degree of care required of a driver . . ."

In the case of Wolfe v. State, 173 Md. 103, 194 Atl. 832 (1937), the Court stated that -

"Skidding is not in itself, and without more, evidence of negligence, . . . nor is mere speed, certainly within lawful limits, apart from the circumstances in connection with which it is considered ordinarily evidence of negligence, . . . Both take color and significance from the facts and circumstances which attend them, and either may be evidence of negligence. Skidding may be evidence of negligence if it appears that it was caused by a failure to take reasonable precaution to avoid it when the conditions at the time made such a result probable in the absence of such precaution. Speed may be evidence of negligence where it appears that under the circumstances it was likely to endanger others who were in the exercise of due care. . . . The modern automobile, because of its speed, weight, power, and design, and the operation of physical laws, is peculiarly subject to the danger of uncontrollable and erratic deviations from its ordinary course. Since it is held on its course by the traction between its tires and the road surface, whatever lessens that traction makes it more difficult to control, and increases the hazard of its skidding. That tendency, because of the power, weight, and potential speed of such machines, carries a constant threat to all users of modern highways and imposes upon the drivers of automobiles the duty of exercising at all times care and vigilance to avoid increasing the danger of skidding created by any condition of the road surface which lessens the traction or grip of the machine on it by adapting the management of

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the car to the conditions. It is a matter of common knowledge chargeable to every one who operates an automobile on a public highway that the danger of skidding on a wet slippery surface increases as the speed increases. And not only does the probability of skidding increase under such conditions as the speed increases, but the seriousness of the possible consequences to other users of the highway increases proportionately. It is also obvious that any sudden swerving from a straight line by an automobile driven at high speed over a wet slippery street increases the probability of skidding, and that the driver is therefore under a constant duty to use all reasonable care to discover and avoid conditions which may require such a movement. . . .

"Applying these principles to the facts of the case, there can be no reasonable doubt that the evidence was sufficient to support a finding that the collision was caused by the defendant's negligence. In valuing the sufficiency of the evidence for that purpose, the truth of so much of it as tends to support that hypothesis, together with such inferences as may naturally and legitimately be deduced therefrom, must be assumed.

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8. It is therefore necessary for you to determine whether [REDACTED] conduct was inconsistent with the exercise of that degree of care which the law required of him under the circumstances, or whether it was sufficient in law to permit the inference that his management of his car was not the direct and proximate cause of the collision.

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9. To recapitulate, it will be necessary for you, in the light of the above, to reach your determination upon certain basic questions in order to determine whether or not [REDACTED] was negligent to a degree which would make this Agency liable for the taxicab claim.

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a. Was [REDACTED] driving at a "reasonable and prudent" rate of speed, taking into consideration traffic and weather conditions at the time and place of the accident?

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b. Did [REDACTED] have his car under sufficient control just before and during the time of the accident?

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c. Was the skidding produced by the fact that his car was not under reasonable control therefore making it necessary to slam on his brakes in an emergency manner, thus causing the skid?

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d. Was [REDACTED] following the taxicab at a "reasonable and prudent" distance at the time and place of the accident, taking all the circumstances into consideration?

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e. Was the traffic light green or red? [REDACTED] says it was green, [REDACTED] says it had just turned red but now states that he did not notice, the taxi driver said it was red, and his passenger said they had stopped at the light and were waiting for it to change?

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f. If the light was red, should [REDACTED] have seen it in time to have come to a reasonable stop?

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g. Was the driver of the taxicab driving in a "reasonable and prudent" manner, taking all factors into consideration? Did he give timely warning of his turn and timely warning of his stopping?

h. Was the taxi's stopping a quick emergency stop, of such a nature that it could be considered a contributory cause of the accident?

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i. In the light of all of the circumstances, was [REDACTED] driving in such a negligent manner as to cause the accident?

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